



February 13, 2009

SENATE BILL No. 492

DIGEST OF SB 492 (Updated February 11, 2009 6:02 pm - DI 106)

Citations Affected: IC 24-5.5; IC 24-9; IC 25-1; IC 25-34.1; IC 32-29; IC 32-30.

Synopsis: Foreclosure of residential mortgages. Provides that in the case of a residential mortgage transaction in which the debtor defaults after June 30, 2009, the creditor shall provide a presuit notice to the debtor that informs the debtor that the creditor intends to initiate foreclosure proceedings, that the debtor may obtain assistance from a foreclosure counselor, and that provides information on how to contact a counselor. Provides that, if a creditor files an action for foreclosure, the creditor shall include with the complaint a notice to the debtor of the debtor's right to participate in a settlement conference, and that if the debtor wishes to participate in a settlement conference, the debtor must contact the court not later than 30 days after notice is served. Requires the creditor to include with the complaint filed with the court a copy of the presuit notice served on the debtor. Specifies that a court may not issue a judgment of foreclosure unless the creditor has sent the notice of settlement conference to the debtor and: (1) the debtor has not responded within 30 days; or (2) the debtor and creditor are unable to reach an agreement at the settlement conference. Provides that a court may not render a judgment of foreclosure until 60 days after the complaint is filed, but permits the court to waive the 60 day period if: (1) the debtor does not respond to the notice of settlement within 30 days and the court is satisfied that the debtor was properly served; (2) the property has been abandoned; or (3) the debtor has defaulted on a previous foreclosure prevention agreement. Specifies that, if a settlement conference is conducted: (1) it must be scheduled between 25 and 60 days after the notice is sent; (2) the debtor must contact a

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Effective: July 1, 2009.

Tallian, Bray, Randolph

January 15, 2009, read first time and referred to Committee on Judiciary.
February 12, 2009, amended, reported favorably — Do Pass.

SB 492—LS 7387/DI 101



foreclosure counselor before the conference and bring certain documents to the conference; (3) the creditor must bring a complete transaction history to the conference; and (4) the creditor's agent must have the authority to bind the agent. Permits the parties to agree to conduct the conference telephonically. Requires the creditor to file a copy of the foreclosure prevention agreement with the court if the parties reach an agreement. Makes other changes and conforming amendments. Provides that certain notice of foreclosure requirements apply to all mortgagees. Requires a foreclosure consultant to retain certain records for a specific time. Allows certain licensing boards to require practitioners to pay real estate appraisal costs in certain administrative actions. Prohibits certain professional licensing boards from accepting the surrender of a practitioner's license if the attorney general has filed a complaint against the practitioner and opposes the surrender. Provides that a broker or salesperson licensee who violates the credit services organizations or mortgage rescue protection fraud provisions is subject to certain disciplinary actions. Prohibits a person from: (1) engaging in real estate transactions or consumer credit mortgage transactions without a permit or license; or (2) misrepresenting certain terms and characteristics of real estate transactions and consumer credit mortgages; and subjects a person who violates any of these prohibitions to certain penalties under the home loan practices law. Removes language prohibiting a person from engaging in a deceptive act in connection with certain loans.

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February 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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SENATE BILL No. 492

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3**, this article does not
4 apply to the following:
5 (1) A person organized or chartered under the laws of this state,
6 any other state, or the United States that relate to a bank, a trust
7 company, a savings association, a savings bank, a credit union, or
8 an industrial loan and investment company.
9 (2) The Federal National Mortgage Association, the Federal
10 Home Loan Mortgage Corporation, or a Federal Home Loan
11 Bank.
12 (3) A department or agency of the United States or of Indiana.
13 (4) A person that is servicing or enforcing a loan that it owns.
14 (5) A person that is servicing a loan:
15 (A) for a person described in subdivisions (1) through (4); or

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~~this section~~, or

(B) insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration.

(6) An attorney licensed to practice law in Indiana who is representing a mortgagor.

SECTION 2. IC 24-5.5-3-1, AS ADDED BY P.L.209-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Subject to IC 32-30-10.5 with respect to first lien mortgage transactions and** in addition to any other notice required by law, a mortgagee, or the mortgagee's assignee, that proceeds under IC 32-30-10 to foreclose a mortgage or deed of trust shall, at the time of filing the complaint in the action, provide the following written notice to the mortgagor in a statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY STATE LAW

Mortgage foreclosure is a complex process. People may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Indiana housing and community development authority."

Service of the written notice required by this chapter shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person.

SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. **A foreclosure consultant shall retain all records and documents related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of a contract with the homeowner.**

SECTION 4. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12.5. **"Real estate transaction" has the meaning set forth in IC 25-34.1-10-8.**

SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A person may not:

- (1) divide a loan transaction into separate parts with the intent of evading a provision of this article;
- (2) structure a home loan transaction as an open-end loan with the

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intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or

(3) engage in a deceptive act in connection with a:

(A) home loan; or

(B) loan described in IC 24-9-1-1.

(3) engage or solicit to engage in a real estate transaction or a consumer credit mortgage transaction without a permit or license required by law; or

(4) represent that a real estate transaction or a consumer credit mortgage transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that:

(A) the real estate transaction or consumer credit mortgage does not have; and

(B) the person knows or reasonably should know the real estate transaction or consumer credit mortgage does not have.

SECTION 6. IC 25-1-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may petition the board to accept the surrender of the practitioner's license instead of having a hearing before the board. The practitioner may not surrender the practitioner's license without the written approval of the board, and the board may impose any conditions appropriate to the surrender or reinstatement of a surrendered license. **The board may not accept the surrender of a practitioner's license if the office of attorney general:**

(1) has filed an administrative complaint concerning the practitioner's license; and

(2) opposes the surrender of the license.

SECTION 7. IC 25-1-11-18, AS AMENDED BY P.L.194-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

(1) Court reporters.

(2) Transcripts.

(3) Certification of documents.

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- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.

(11) Real estate appraisals.

SECTION 8. IC 25-34.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

- (1) performs the acts of a salesperson without a salesperson license;
- (2) performs the acts of a broker without a broker license; or
- (3) conducts, or solicits or accepts enrollment of students for, a course as prescribed in IC 25-34.1-3 without course approval;

commits a Class A infraction. Upon conviction for an offense under this section, the court shall add to any fine imposed, the amount of any fee or other compensation earned in the commission of the offense. Each transaction constitutes a separate offense.

(b) In all actions for the collection of a fee or other compensation for performing acts regulated by this article, it must be alleged and proved that, at the time the cause of action arose, the party seeking relief was not in violation of this section.

(c) The commission may issue a cease and desist order to prevent violations of this section.

(1) If the commission determines that a person is violating this section, or is believed to be violating this section, the commission may issue an order to that person setting forth the time and place for a hearing at which the affected person may appear and show cause as to why the challenged activities are not in violation of this section.

(2) After an opportunity for hearing, if the commission determines that the person is violating this section, the commission shall issue a cease and desist order which shall describe the person and activities which are the subject of the order.

(3) A cease and desist order issued under this section is enforceable in the circuit courts of this state.

(d) The attorney general, the commission, or the prosecuting attorney of any county in which a violation occurs may maintain an action in the name of the state to enjoin a person from violating this section.

(e) In charging any person in a complaint for an injunction or in

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1 affidavit, information, or indictment with the violation of the provisions
 2 of this section, it is sufficient, without averring any further or more
 3 particular facts, to charge that the person upon a certain day and in a
 4 certain county either acted as a real estate broker or salesperson not
 5 having a license or conducted, or solicited or accepted enrollment of
 6 students for, a broker or salesperson course without course approval.

7 **(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be**
 8 **disciplined under IC 25-1-11 and this section.**

9 **(f) (g)** Each enforcement procedure established in this section is
 10 supplemental to other enforcement procedures established in this
 11 section.

12 SECTION 9. IC 32-29-7-3, AS AMENDED BY P.L.100-2008,
 13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2009]: Sec. 3. (a) **Except as provided in IC 32-30-10.5 for**
 15 **first lien mortgage transactions**, in a proceeding for the foreclosure
 16 of a mortgage executed on real estate, process may not issue for the
 17 execution of a judgment or decree of sale for a period of three (3)
 18 months after the filing of a complaint in the proceeding. However:

19 (1) the period is:

20 (A) twelve (12) months in a proceeding for the foreclosure of
 21 a mortgage executed before January 1, 1958; and

22 (B) six (6) months in a proceeding for the foreclosure of a
 23 mortgage executed after December 31, 1957, but before July
 24 1, 1975; and

25 (2) if the court finds that the mortgaged real estate is residential
 26 real estate and has been abandoned, a judgment or decree of sale
 27 may be executed on the date the judgment of foreclosure or
 28 decree of sale is entered, regardless of the date the mortgage is
 29 executed.

30 (b) A judgment and decree in a proceeding to foreclose a mortgage
 31 that is entered by a court having jurisdiction may be filed with the clerk
 32 in any county as provided in IC 33-32-3-2. **Except as provided in**
 33 **IC 32-30-10.5 for first lien mortgage transactions**, after the period
 34 set forth in subsection (a) expires, a person who may enforce the
 35 judgment and decree may file a praecipe with the clerk in any county
 36 where the judgment and decree is filed, and the clerk shall promptly
 37 issue and certify to the sheriff of that county a copy of the judgment
 38 and decree under the seal of the court.

39 (c) Upon receiving a certified judgment under subsection (b), the
 40 sheriff shall, subject to section 4 of this chapter, sell the mortgaged
 41 premises or as much of the mortgaged premises as necessary to satisfy
 42 the judgment, interest, and costs at public auction at the office of the

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1 sheriff or at another location that is reasonably likely to attract higher
 2 competitive bids. The sheriff shall schedule the date and time of the
 3 sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m.
 4 on any day of the week except Sunday.

5 (d) Before selling mortgaged property, the sheriff must advertise the
 6 sale by publication once each week for three (3) successive weeks in
 7 a daily or weekly newspaper of general circulation. The sheriff shall
 8 publish the advertisement in at least one (1) newspaper published and
 9 circulated in each county where the real estate is situated. The first
 10 publication shall be made at least thirty (30) days before the date of
 11 sale. At the time of placing the first advertisement by publication, the
 12 sheriff shall also serve a copy of the written or printed notice of sale
 13 upon each owner of the real estate. Service of the written notice shall
 14 be made as provided in the Indiana Rules of Trial Procedure governing
 15 service of process upon a person. The sheriff shall charge a fee of ten
 16 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional
 17 owner for service of written notice under this subsection. The fee is:

18 (1) a cost of the proceeding;

19 (2) to be collected as other costs of the proceeding are collected;
 20 and

21 (3) to be deposited in the county general fund for appropriation
 22 for operating expenses of the sheriff's department.

23 (e) The sheriff also shall post written or printed notices of the sale
 24 at the door of the courthouse of each county in which the real estate is
 25 located.

26 (f) If the sheriff is unable to procure the publication of a notice
 27 within the county, the sheriff may dispense with publication. The
 28 sheriff shall state that the sheriff was not able to procure the
 29 publication and explain the reason why publication was not possible.

30 (g) Notices under subsections (d) and (e) must contain a statement,
 31 for informational purposes only, of the location of each property by
 32 street address, if any, or other common description of the property other
 33 than legal description. A misstatement in the informational statement
 34 under this subsection does not invalidate an otherwise valid sale.

35 (h) The sheriff may charge an administrative fee of not more than
 36 two hundred dollars (\$200) with respect to a proceeding referred to in
 37 subsection (b) for actual costs directly attributable to the administration
 38 of the sale under subsection (c). The fee is:

39 (1) payable by the person seeking to enforce the judgment and
 40 decree; and

41 (2) due at the time of filing of the praecipe;
 42 under subsection (b).

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SECTION 10. IC 32-30-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Except as provided in IC 32-30-10.5 for first lien mortgage transactions**, if a mortgagor defaults in the performance of any condition contained in a mortgage, the mortgagee or the mortgagee's assigns may proceed in the circuit court of the county where the real estate is located to foreclose the equity of redemption contained in the mortgage.

(b) If the real estate is located in more than one (1) county, the circuit court of any county in which the real estate is located has jurisdiction for an action for the foreclosure of the equity of redemption contained in the mortgage.

SECTION 11. IC 32-30-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **Subject to IC 32-30-10.5 with respect to first lien mortgage transactions**, in rendering judgment of foreclosure, the courts shall:

(1) give personal judgment against any party to the suit liable upon any agreement for the payment of any sum of money secured by the mortgage; and

(2) order the mortgaged premises, or as much of the mortgaged premises as may be necessary to satisfy the mortgage and court costs, to be sold first before the sale of other property of the defendant.

The judgment is satisfied by the payment of the mortgage debt, with interest and costs, at any time before sale.

SECTION 12. IC 32-30-10-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

(1) proceed to foreclose the mortgagee's mortgage:

(A) while the plaintiff is prosecuting any other action for the same debt or matter that is secured by the mortgage; or

(B) while the plaintiff is seeking to obtain execution of any judgment in any other action; or

(C) **unless one (1) of the conditions set forth in IC 32-30-10.5-10(a) applies, in the case of a first lien mortgage transaction; or**

(2) prosecute any other action for the same matter while the plaintiff is foreclosing the mortgagee's mortgage or prosecuting a judgment of foreclosure.

SECTION 13. IC 32-30-10.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 10.5. Foreclosure Prevention Agreements for Residential Mortgages

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1 **Sec. 1. (a) The general assembly makes the following findings:**

2 **(1) Indiana faces a serious threat to its state economy and to**
 3 **the economies of its political subdivisions because of Indiana's**
 4 **high rate of residential mortgage foreclosures, which**
 5 **constitutes an emergency.**

6 **(2) Indiana's high rate of residential mortgage foreclosures**
 7 **has adversely affected property values in Indiana, and may**
 8 **have an even greater adverse effect on property values if the**
 9 **foreclosure rate continues to rise.**

10 **(3) It is in the public interest for the state to modify the**
 11 **foreclosure process to require creditors and debtors to engage**
 12 **in good faith negotiations designed to avoid foreclosure by**
 13 **allowing debtors to repay their mortgages.**

14 **(b) The purpose of this chapter is to avoid unnecessary**
 15 **foreclosures of residential properties and thereby provide stability**
 16 **to Indiana's statewide and local economies by:**

17 **(1) requiring early contact and communications between**
 18 **creditors, their authorized agents, and debtors in order to**
 19 **engage in negotiations that could avoid foreclosure; and**

20 **(2) facilitating the modification of residential mortgages in**
 21 **appropriate circumstances.**

22 **Sec. 2. As used in this chapter, "creditor" refers to:**

23 **(1) the creditor (as defined in IC 24-4.4-1-301(2)); or**

24 **(2) a mortgage servicer;**

25 **in a first lien mortgage transaction (as defined in**
 26 **IC 24-4.4-1-301(6)).**

27 **Sec. 3. As used in this chapter, "debtor" refers to a person**
 28 **obligated to repay a mortgage, including a coborrower, cosigner,**
 29 **or guarantor.**

30 **Sec. 4. As used in this chapter, "foreclosure prevention**
 31 **agreement" means a written agreement that:**

32 **(1) is executed by both the creditor and the debtor; and**

33 **(2) offers the debtor an individualized plan that may include:**

34 **(A) a temporary forbearance with respect to the mortgage;**

35 **(B) a reduction of any arrearage owed by the debtor;**

36 **(C) a reduction of the interest rate that applies to the**
 37 **mortgage;**

38 **(D) a repayment plan;**

39 **(E) a deed in lieu of foreclosure;**

40 **(F) reinstatement of the mortgage upon the debtor's**
 41 **payment of any arrearage; or**

42 **(G) a sale of the property.**

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1 **Sec. 5.** As used in this chapter, "mortgage" refers to a first lien
2 mortgage transaction (as defined in IC 24-4.4-1-301(6)).

3 **Sec. 6.** As used in this chapter, "mortgage foreclosure
4 counselor" means a foreclosure prevention counselor who is part
5 of, or has been trained or certified by, the Indiana Foreclosure
6 Prevention Network.

7 **Sec. 7.** As used in this chapter, "mortgage servicer" means the
8 last person to whom:

- 9 (1) a debtor in a mortgage; or
10 (2) the debtor's successor in interest;
11 has been instructed to send payments on the mortgage.

12 **Sec. 8.** (a) After June 30, 2009, if a debtor defaults in the
13 performance of any condition contained in a mortgage, the creditor
14 shall send to the debtor by certified mail, return receipt requested,
15 a presuit notice that informs the debtor that the creditor intends to
16 initiate a foreclosure and that the debtor may obtain assistance
17 from a foreclosure counselor and that provides information on how
18 to contact a housing counselor.

19 (b) The notice required by subsection (a) shall be sent to:

- 20 (1) the address of the mortgaged property; or
21 (2) the last known mailing address of the debtor if the
22 creditor's records indicate that the mailing address of the
23 debtor is other than the address of the mortgaged property.

24 (c) If a creditor files an action to foreclose a mortgage, the
25 creditor shall include with the complaint served on the debtor a
26 notice of right to participate in a settlement conference. The notice
27 must inform the debtor that the debtor may schedule a settlement
28 conference by notifying the court of the debtor's intent to
29 participate in a settlement conference not later than thirty (30)
30 days after the complaint is served.

31 **Sec. 9.** (a) After June 30, 2009, a court may not issue a judgment
32 of foreclosure under IC 32-30-10 on a mortgage subject to this
33 chapter unless all of the following apply:

- 34 (1) The creditor has given the notice required under section
35 8(c) of this chapter.
36 (2) The debtor either:
37 (A) does not contact the court within the thirty (30) day
38 period described in section (8)(c) of this chapter to
39 schedule a settlement conference under section (8)(c) of
40 this chapter; or
41 (B) contacts the court within the thirty (30) day period
42 described in section (8)(c) of this chapter to schedule a

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conference under section (8)(c) of this chapter and, upon the conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(b) In a foreclosure action filed under IC 32-30-10-3, the creditor shall attach to the complaint filed with the court a copy of the notice sent to the debtor under section (8)(a) of this chapter.

(c) Except as provided in subsection (d), in a foreclosure action filed after June 30, 2009, the court may not render a judgment of foreclosure until sixty (60) days after the date the complaint is filed, if subsection (a)(2)(A) applies.

(d) Upon petition by the creditor, the court may waive the sixty (60) day period described in subsection (c) under any of the following circumstances:

(1) All of the following occur:

(A) The debtor does not respond to the creditor's notice under section 8(c) of this chapter not later than thirty (30) days after the date of the notice.

(B) The creditor demonstrates to the court that the creditor has made a reasonable effort to verify the mailing address of the debtor, if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

(C) The court is satisfied that service was perfected.

However, the court may deny a creditor's petition under this subsection and order the creditor to provide the notice required under section 8(c) of this chapter using another method of service.

(2) The court determines that the property that is the subject of the mortgage has been abandoned.

(3) The debtor has defaulted on a previous foreclosure prevention agreement or other workout agreement with the creditor and, after reviewing the terms of the agreement, the court determines that a waiver of the sixty (60) day period described in subsection (c)(1) is appropriate and in the interest of justice.

Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference. The court's notice of a settlement conference must do the following:

(1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the

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notice, which date must not be earlier than twenty-five (25) days after the date of the notice or later than sixty (60) days after the date of the notice, for the purpose of attempting to negotiate a foreclosure prevention agreement.

(2) Require the debtor to contact a mortgage foreclosure counselor before the date of the settlement conference. The notice must provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Require the debtor to bring to the settlement conference the following documents needed to engage in good faith negotiations with the creditor:

(A) Documentation of the debtor's present and future income, expenses, assets, and liabilities, including documentation of the debtor's employment history.

(B) Any other documentation or information that the court determines is needed for the debtor to engage in good faith negotiations with the creditor. The court shall identify any documents required under this clause with enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.

(4) Require the creditor to bring to the settlement conference a complete transaction history for the mortgage upon which the mortgage foreclosure action is based.

(5) Inform the parties that:

(A) each party has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor at the settlement conference; and

(B) an attorney or a mortgage foreclosure counselor may participate in the settlement conference in person or by telephone.

(6) Inform the parties that the settlement conference will be conducted at the county courthouse on the date and time specified in the notice under subdivision (1) unless the parties submit to the court not later than twenty (20) days after the date of the court's notice a statement that:

(A) is signed by all parties identified in the court's notice; and

(B) indicates that the parties have agreed to hold the settlement conference:

(i) by telephone at a date and time agreed to by the parties, which date and time must not be later than the date and time specified in the notice under subdivision

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(1); or

(ii) in person at a location agreed to by the parties and at a date and time agreed to by the parties, which date and time must not be later than the date and time specified in the notice under subdivision (1).

(b) The court may require any person that is a party to the foreclosure action to appear at or participate in a settlement conference held under this section.

(c) At the court's discretion, a settlement conference held at a county courthouse under subsection (a)(6) may or may not be attended by a judicial officer.

(d) The creditor shall ensure that any person representing the creditor:

(1) at a settlement conference scheduled under subsection (a); or

(2) in any negotiations with the debtor designed to reach agreement on the terms of a foreclosure prevention agreement;

has authority to bind the creditor in negotiating a foreclosure prevention agreement with the debtor.

(e) If, as a result of a settlement conference held under this section, the debtor and the creditor agree to enter into a foreclosure prevention agreement, the agreement shall be reduced to writing and signed by both parties, and each party shall retain a copy of the signed agreement. Not later than seven (7) business days after the signing of the foreclosure prevention agreement, the creditor shall file with the court a notice indicating that a foreclosure prevention agreement has been reached.

Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action:

(1) shall serve notice of a settlement conference described in section 10 of this chapter on the parties to the action not later than August 1, 2009; and

(2) may not proceed to render a judgment of foreclosure in an action described in subsection (a) unless, upon the conclusion of a settlement conference described in this section, the parties are unable to agree on the terms of a foreclosure prevention

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1 **agreement.**
2 SECTION 14. IC 32-30-12-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided**
4 **in IC 32-30-10.5 for first lien mortgage transactions,** it is not
5 necessary in any action upon a mortgage or lien to give time for:
6 (1) the payment of money; or
7 (2) performing any other act.
8 Final judgment may be given in the first instance.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 492, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 3, delete "IC 24-5.5-3-1," and insert "**IC 24-5.5-3,**".

Page 2, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records and documents related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of a contract with the homeowner.**

SECTION 4. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 12.5. "Real estate transaction" has the meaning set forth in IC 25-34.1-10-8.**

SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A person may not:

- (1) divide a loan transaction into separate parts with the intent of evading a provision of this article;
- (2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; ~~or~~
- ~~(3) engage in a deceptive act in connection with a:~~
 - ~~(A) home loan; or~~
 - ~~(B) loan described in IC 24-9-1-1.~~
- (3) engage or solicit to engage in a real estate transaction or a consumer credit mortgage transaction without a permit or license required by law; or**
- (4) represent that a real estate transaction or a consumer credit mortgage transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that:**
 - (A) the real estate transaction or consumer credit mortgage does not have; and**
 - (B) the person knows or reasonably should know the real estate transaction or consumer credit mortgage does not have.**

SECTION 6. IC 25-1-11-17 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may petition the board to accept the surrender of the practitioner's license instead of having a hearing before the board. The practitioner may not surrender the practitioner's license without the written approval of the board, and the board may impose any conditions appropriate to the surrender or reinstatement of a surrendered license. **The board may not accept the surrender of a practitioner's license if the office of attorney general:**

(1) has filed an administrative complaint concerning the practitioner's license; and

(2) opposes the surrender of the license.

SECTION 7. IC 25-1-11-18, AS AMENDED BY P.L.194-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.

(11) Real estate appraisals.

SECTION 8. IC 25-34.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

- (1) performs the acts of a salesperson without a salesperson license;
- (2) performs the acts of a broker without a broker license; or
- (3) conducts, or solicits or accepts enrollment of students for, a course as prescribed in IC 25-34.1-3 without course approval;

commits a Class A infraction. Upon conviction for an offense under this section, the court shall add to any fine imposed, the amount of any fee or other compensation earned in the commission of the offense. Each transaction constitutes a separate offense.

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(b) In all actions for the collection of a fee or other compensation for performing acts regulated by this article, it must be alleged and proved that, at the time the cause of action arose, the party seeking relief was not in violation of this section.

(c) The commission may issue a cease and desist order to prevent violations of this section.

(1) If the commission determines that a person is violating this section, or is believed to be violating this section, the commission may issue an order to that person setting forth the time and place for a hearing at which the affected person may appear and show cause as to why the challenged activities are not in violation of this section.

(2) After an opportunity for hearing, if the commission determines that the person is violating this section, the commission shall issue a cease and desist order which shall describe the person and activities which are the subject of the order.

(3) A cease and desist order issued under this section is enforceable in the circuit courts of this state.

(d) The attorney general, the commission, or the prosecuting attorney of any county in which a violation occurs may maintain an action in the name of the state to enjoin a person from violating this section.

(e) In charging any person in a complaint for an injunction or in affidavit, information, or indictment with the violation of the provisions of this section, it is sufficient, without averring any further or more particular facts, to charge that the person upon a certain day and in a certain county either acted as a real estate broker or salesperson not having a license or conducted, or solicited or accepted enrollment of students for, a broker or salesperson course without course approval.

(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be disciplined under IC 25-1-11 and this section.

(f) (g) Each enforcement procedure established in this section is supplemental to other enforcement procedures established in this section."

Page 5, line 22, delete "will" and insert "**may**".

Page 5, delete lines 25 through 39.

Page 5, line 40, delete "(7)" and insert "**(3)**".

Page 5, line 40, delete "necessary and".

Page 6, delete lines 2 through 14.

Page 6, line 34, delete ":".

Page 6, delete lines 35 through 39.

Page 6, line 40, delete "(B)".

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Page 6, run in lines 34 through 40.

Page 6, line 41, delete "(i)" begin a new line double block indented and insert:

"(A)".

Page 7, line 1, delete "(ii)" begin a new line double block indented and insert:

"(B)".

Page 7, line 2, delete "(iii)" begin a new line double block indented and insert:

"(C)".

Page 7, line 4, delete "(iv)" begin a new line double block indented and insert:

"(D)".

Page 7, line 5, delete "(v)" begin a new line double block indented and insert:

"(E)".

Page 7, line 6, delete "(vi)" begin a new line double block indented and insert:

"(F)".

Page 7, line 8, delete "(vii)" begin a new line double block indented and insert:

"(G)".

Page 7, delete lines 20 through 22.

Page 7, line 23, delete "Sec. 9." and insert "Sec. 8.".

Page 7, line 26, delete "written" and insert "presuit".

Page 7, line 26, delete "does the following:" and insert **"informs the debtor that the creditor intends to initiate a foreclosure and that the debtor may obtain assistance from a foreclosure counselor and that provides information on how to contact a housing counselor."**.

Page 7, delete lines 27 through 42.

Page 8, delete lines 1 through 30.

Page 8, delete lines 36 through 42, begin a new paragraph and insert:

"(c) If a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice of right to participate in a settlement conference. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference not later than thirty (30) days after the complaint is served."

Page 9, delete lines 1 through 39.

Page 9, line 40, delete "Sec. 10." and insert "Sec. 9.".

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Page 9, line 40, delete "creditor may not proceed" and insert "**court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter**".

Page 9, delete line 41.

Page 9, line 42, delete "by filing a complaint in a court having jurisdiction".

Page 10, line 3, delete "9(a)" and insert "**8(c)**".

Page 10, line 5, delete "creditor" and insert "**court**".

Page 10, line 6, delete "9(a)(4)" and insert "**(8)(c)**".

Page 10, line 7, after "a" insert "**settlement**".

Page 10, line 7, delete "offered by the debtor".

Page 10, line 8, delete "9(a)(2)" and insert "**(8)(c)**".

Page 10, line 9, delete "creditor" and insert "**court**".

Page 10, line 10, delete "9(a)(4)" and insert "**(8)(c)**".

Page 10, line 10, after "a" insert "**settlement**".

Page 10, line 11, delete "offered by the debtor".

Page 10, line 11, delete "9(a)(2)" and insert "**(8)(c)**".

Page 10, line 12, delete "such" and insert "**the**".

Page 10, delete lines 15 through 16.

Page 10, line 17, delete "subsection (a)," and insert "**IC 32-30-10-3,**".

Page 10, line 19, delete "9(a)" and insert "**(8)(a)**".

Page 10, line 21, delete "under subsection (a)".

Page 10, line 22, delete ":".

Page 10, line 23, delete "(1)".

Page 10, line 23, delete "in the" and insert "**if**".

Page 10, run in lines 22 through 23.

Page 10, line 24, delete "case of a complaint filed under".

Page 10, line 24, delete "(a)(2)(A); or" and insert "**(a)(2)(A) applies.**".

Page 10, delete lines 25 through 26.

Page 10, line 28, delete "(c)(1)" and insert "**(c)**".

Page 10, line 32, delete "9(a)" and insert "**8(c)**".

Page 10, line 42, delete "9(a)" and insert "**8(c)**".

Page 11, line 6, delete "such" and insert "**the**".

Page 11, delete lines 10 through 42.

Page 12, delete lines 1 through 6, begin a new paragraph, and insert:

"Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference. The court's notice of a settlement conference must do the following:".

Page 12, line 16, delete "and for any other mortgage" and insert ".".

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Page 12, delete lines 17 through 18.
 Page 12, line 33, delete "The transaction".
 Page 12, delete lines 34 through 42.
 Page 13, delete lines 1 through 4.
 Page 13, line 7, after "or" insert "**assisted by**".
 Page 13, delete lines 29 through 42.
 Page 14, delete lines 1 through 6.
 Page 14, line 7, delete "(e)" and insert "**(b)**".
 Page 14, line 10, delete "(f)" and insert "**(c)**".
 Page 14, line 11, delete "(c)(6)" and insert "**(a)(6)**".
 Page 14, line 13, delete "(g)" and insert "**(d)**".
 Page 14, line 15, delete "(c);" and insert "**(a);**".
 Page 14, delete lines 22 through 28.
 Page 14, line 29, delete "(i)" and insert "**(e)**".
 Page 14, line 35, delete "and the reporting agency, on a".
 Page 14, line 36, delete "form prescribed by the reporting agency,".
 Page 14, delete lines 38 through 42, begin a new paragraph and insert:

"Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action:

(1) shall serve notice of a settlement conference described in section 10 of this chapter on the parties to the action not later than August 1, 2009; and

(2) may not proceed to render a judgment of foreclosure in an action described in subsection (a) unless, upon the conclusion of a settlement conference described in this section, the parties are unable to agree on the terms of a foreclosure prevention agreement.

SECTION 8. IC 32-30-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. Except as provided in IC 32-30-10.5 for first lien mortgage transactions, it is not necessary in any action upon a mortgage or lien to give time for:

(1) the payment of money; or

(2) performing any other act.

Final judgment may be given in the first instance."

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Delete page 15.
Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 492 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 2.

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